IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1961 OF 2005

Remo Marketing Pvt. Ltd. ...Petitioner

V/s.

The State of Maharashtra & Ors ...Respondents

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Mr. A.M. Sarogi, Advocate the petitioner.

Mr. V.B. Konde Deshmukh, A.P.P. for R. No. 1.

Mr. S.R. Borulkar, P.P. for Respondent No.2

Mr. J.T. Trivedi and Mr. B.J. Trivedi, Adv. for Respondent No.3.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 12.09.2005

DATE OF PRONOUNCING THE ORDER : 13.09.2005

P.C.:-

1. Heard Mr. Sarogi, the learned advocate for the petitioner, Mr. Konde Deshmukh, A.P.P. for respondent No.1, Mr. Borulkar, Public Prosecutor for Respondent No.2 and Mr. Trivedi, learned advocate for Respondent No.3 i.e.original complainant. Investigating Officer, Police Inspector, Mr. N.D. Parmar of C.I.D. Crime, Gandhinagar, Gujrat is present in person before the Court.

2. The petitioner has prayed for quashing of case No. 986 of 2003 pending before the learned C.M.M. Court at Ahmedabad. The said case is under Section 406, 420, 120-B and under Section 3, 4 and 5 of the Price Chit and Money Circulation (Banning) Act, 1978 (hereinafter referred to as the "Prize Chit Act" for the sake of brevity). The said case pertains to F.I.R. No.4 of 2003 of Gandhinagar police Station.

3. Mr. Borulkar, has raised a preliminary objection that this Court would have no jurisdiction to entertain the present petition. He has submitted that as the F.I.R. is lodged at Gandhinagar, Gujrat this court cannot quash the said F.I.R.

4. Mr. Sarogi, on the other hand has submitted that this court would have jurisdiction to entertain the present petition. As the main administrative office of the petitioner is in Mumbai and all the transactions of the petitioner company are routed through the administrative office at Mumbai. Mr. Sarogi has further submitted that all the materials viz. Cell Phones etc. are purchased in Mumbai and thereafter the goods were despatched from the Administrative Office at Mumbai to Gujrat. He has further submitted that the majority of the payments were being made from Mumbai. Mr. Sarogi submitted that it is an admitted fact that the petitioner company has its administrative office in Mumbai and

this fact has not been disputed by the respondent No.2. It is further pointed out that the respondent No.2 has also sealed some premises in this case which are in Mumbai. The said premises are Flat No. B-203, Casurina, Evershine Green Flats, Oshiwara, Lokhandwala, at Andheri (West), Mumbai. Mr. Sarogi, has placed reliance on the decision of the Supreme Court in the case of **Navinchandra N. Majithia Vs. State of Maharashtra, reported in AIR 2000 SC 2966**. In the said case, the petitioner who was the Managing Director of the company having its registered office at Mumbai, had entered into an agreement of sale of shares of his company with the complainant and certain shares were transferred to the complainant. There were disputes and the complainant filed a complaint at Shilong. The petitioner therein preferred writ petition in the High Court at Bombay praying for quashing of F.I.R.. The Bombay High Court dismissed it on the ground of want of territorial jurisdiction. The Hon'ble Apex Court held that the rejection by the Bombay High Court for want of territorial jurisdiction on the sole consideration that the F.I.R. was filed in another State is not proper. In the case of Navinchandra N. Majithia (supra), it is seen that the petitioner had its registered office at Bombay. In the present case also the administrative office of the petitioner company in Mumbai, this fact is not disputed on behalf of the respondent Nos. 1 and 2. It has also

not been disputed that certain properties have been sealed in the present case which are in Mumbai. Furthermore, it has not been disputed that the main administrative office of the petitioner is in Mumbai and all the transactions of the petitioner company are routed through the administrative office at Mumbai. So also it is not disputed that all the materials viz. Cell Phones etc. are purchased in Mumbai and thereafter the goods were despatched from the Administrative Office, Mumbai to Gujrat and that major payments were being made from Mumbai. Looking to all these facts I am of the opinion that this Court would have jurisdiction to entertain the present petition.

5. Thereafter, Mr. Borulkar, has submitted that the petitioner had earlier preferred an application before the Gujrat High court for quashing of the F.I.R. The said application came to be rejected and the said order was confirmed by the Supreme Court. Mr. Borulkar has submitted that in view of this fact, the present petition is not maintainable and hence cannot be considered.

6. Mr. Sarogi, on the other hand pointed out that the application preferred before the Gujrat High Court was preferred by three of the accused persons. The present petition has not been filed by any of those accused persons and as such there can be no bar

for filing the present petition and consideration of the same. Mr. Sarogi has further submitted that the application preferred before the Gujrat High Court was for quashing F.I.R. whereas the present petition has been filed for quashing of Case No. 986 of 2003 pending before the learned C.M.M. Court at Ahmedabad. He has submitted that hence, essentially the prayers are also different. Lastly, Mr. sarogi has submitted that the grounds taken in the present petition were not urged before the Court at Gujrat and the Supreme Court. The main ground, according to Mr. Sarogi is that when the petitioner company launched this particular scheme, the opinion of former Chief Justice of India Justice Y.V. Chandrachud was obtained in the matter. The said opinion is annexed to the present petition at Exh.'A'. Justice Y.V. Chandrachud has considered the scheme to be launched by the petitioner company in detail and has given a detailed opinion thereon. The said opinion is concluded by stating that in the circumstances, the scheme of the Querist does not violate the provisions of the Act or of any other law bearing on the matter. Mr. Sarogi, has also placed reliance on the opinion of Justice A.N. Divecha, Retired Judge of the Gujrat High Court. Justice Divecha after discussing the scheme in detail, in his opinion dated 11.11.2002 has stated that the scheme would not fall under Chit Fund Act or the Prize Chit Act. Reliance has also been placed on the Circular

of the Government of India dated 31.3.2003 which states that the provisions of the Prize Chit Act would not be applicable to direct/net work/multi level marketing. The said circular is annexed at Exh."D" to the present petition. Mr. Sarogi has submitted that this opinion and the circular were not brought to the notice of the Court when earlier application was rejected.

7. Mr. Borulkar, has not disputed that the opinion has been given in the case of the present petitioner company and that the opinion is in respect of the very scheme floated by the company for which they are being prosecuted. However, it is the contention of Mr. Borulkar that respondent No.2 is not bound by any such opinions and they can still register the complaints in relation to the scheme. It is an admitted fact that the scheme is within the four corners of the opinions which have been referred to above and petitioner has in no way overstepped the scheme as mentioned in the opinions. In view of these two opinions, in my opinion, the complaint could not have been registered by the respondent No.2.

8. However, one other factor which is very important in the present case is that Mr. Trivedi, the learned advocate for respondent No.3 original complainant has stated that the complainant has no grievance with the

petitioners. He has further submitted that the complainant is not interested in pursuing the prosecution. Mr. Trivedi has submitted that from the initial stage itself the complainant had not initiated any move for filing the F.I.R. Mr. Trivedi has further submitted that this Court would have jurisdiction in view of what Mr. Sarogi has submitted. He has further submitted that as the complainant has no grievance against the petitioner company and the complainant does not wish to pursue his complaint, the complaint be quashed. Reliance has been placed on various decisions of the Supreme Court and this Court wherein when the disputes are settled between the parties and the complainant does not wish to pursue his complaint, the complaint came be quashed. Reliance is placed on the following decisions;

i). B.S. Joshi Vs. State of Haryana, AIR 2003 SC 1386,

ii) Fahimuddin Vs. State of U.P., AIR 1981 SC 2008(3),

iii) Judgment of the Division Bench of this Court in Cri. W.P. No. 1672 of 2002 dated 20.12.2002 (Alan Douglas Grant Vs. State of Mah.)

iv) Order dated 27.3.2001 passed by His Lordship Mr. Justice S.S. Parkar in Cri. W.P. No. 366 of 2001.

9. I may also refer to the decision of this Court dated 25.02.2003, in the case of **Anil Agarwal and**

Ors. Vs. Transgene Biotek Ltd. and Ors. in Criminal Writ Petition No. 410 of 2001 wherein on account of settlement between the parties, the F.I.R. registered with S.R. Nagar Police Station, Hyderabad and F.I.R. registered with Panjagutta police station, Hyderabad came to be quashed by this Court. So also in **Criminal Writ Petition No. 771 of 2003 in the case of Oriental Insurance Company Ltd. and Ors. Vs. Shri. Surendra Kumar Jain and Ors.,** this Court (Coram: J.A. Patil, J.) by order dated 5.8.2003 has granted rule and interim relief in the matter which pertains to complaint which was pending before the Court of C.J.M. Kolkatta. In view of these decisions especially in the case of Anil Agarwal (supra) this Court can quash the present case which is pending before the learned C.M.M., Ahmedabad.

10. Looking to the fact that the complainant does not wish to pursue his complaint and in view of the facts of this case and various decisions cited above, I am of the opinion that this Court can consider the prayer of the petitioner and quash the prosecution in the said case. Hence, case No. 986 of 2003 pending before the learned C.M.M. Court at Ahmedabad and the proceedings relating thereto are quashed. Obviously, when the proceedings are quashed, the properties seized and/or sealed by the Investigating Agency have to be returned to the petitioner forthwith. So also the Bank accounts of the petitioner which have been

frozen during the investigation of this case, be defrozen. Mr. Sarogi further stated that one of the accused i.e. Mr. Rana, is on temporary bail in the present case and the period of temporary bail comes to an end in a few days. In view of the above order he would not be required to surrender and he is set at liberty.

11. Office to issue authenticated copy of this order to the parties. Parties to act on authenticated copy of this order.

12. Writ petition is disposed of.

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